

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Ann M. Larson,
plaintiff,

civil file 09 3720 (MJD/LIB)

vs.

Wells Fargo Bank N.A.,
defendant.

REPLY IN SUPPORT OF MOTION

Counsel for Wells Fargo Bank N.A. argues at some length in its recently filed memorandum (document 28 herein) that Mrs. Larson's position is inequitable, and asks this court to legislate an exception to the language of Minn. Stat. 507.02, the statute which requires the signature of both spouses to validate a mortgage upon the homestead. The exception would allow married but separated parties to mortgage their separate properties without the consent of their spouse.

The argument is clear enough and I do not see any purpose in belaboring the arguments put forward by either side.

However, I want to make one point, which I hope does not seem like quibbling: I respectfully submit that counsel goes too far in claiming on page 1 of his memorandum, filed herein as document number 28 that "Mr. Larson claimed he was single and Wells Fargo had no reason to think otherwise ..." and again on page 7 of document 28: "Wells Fargo had no reason to doubt Mr. Larson's representation [that he was single]."

As the affidavit of Mr. Larson shows (page 2 of document 24 herein), he filed his federal tax returns as "married filing separately" and he is certain that Wells Fargo Bank N.A. had possession of copies of his returns when it made the second mortgage loan at issue in this case.

Wells Fargo Bank N.A. is certainly free to argue about its knowledge or lack thereof,

but it overstates the undisputed facts to claim that Wells Fargo had “no reason” to believe James Larson was married when it made the second mortgage loan.

The argument about the knowledge or lack of knowledge by Wells Fargo Bank N.A. is superfluous to its equitable argument for a two-property exception to Minn. Stat. 507.02, but I did not want the point to go by without comment.

Respectfully submitted,

/s/ Sam Calvert
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